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CONSUMER PROTECTION LAW*B C Nirmal**

I INTRODUCTION

THE CONCEPTS of ‘consumer protection’,¹ ‘consumer rights’² and ‘consumerism’³ have gained an increasing degree of significance and recognition since the establishment of Consumer Education and Protective Association with Garland Dempsey as its first chairperson. While the concern for the protection of the interests of consumers has been expressed at all times

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1 The concept of consumer protection is based on the idea of the best value for money and has three main aspects: economic, physical and public interests. It involves the idea of protection of the rights of consumers and safeguards against their violations. In a larger context ‘consumer protection’ refers to some kind of safeguards for the members of the society from all sorts of malpractices and exploitative deeds of market operators. See generally, P. Leelakrishnan (ed.) *Consumer Protection and Legal Control*, 123-24 (1984).

2 The consumer’s rights recognized at international level are : right to safety, right to be informed, right to choose, right to be heard, right to redress, right to consumer education, right to a healthy environment and the right to basic needs. The first four rights were declared by the US President Kennedy on 15th March 1962. Next three rights were recognized by the International Organization of Consumers Union (IOCU). In March, IOCU added the right to basic needs to the list of consumer’s rights.

3 ‘Consumerism’ is a social movement seeking to augment the rights and powers of the buyers in relation to sellers. Philip Kotler ‘What Consumerism means for Marketers?’ *Harvard Business Review*, (May-June 1972), 48-57. Consumerism may be defined as an ‘organized effort of consumers seeking redressal, restitution and remedy for dissatisfaction they have accumulated in the acquisition of their standard of living’. R.H. Burskirk & James T. Rothe, ‘Consumerism An Interpretation’, 34(4) *Journal of Marketing*, 62 (1970). Consumerism is very often seen as a social force within the environment designed to aid and protect the consumer by exerting legal, moral and economic pressure on the business.

The need for consumer protection stems from the weak bargaining position of consumers resulting from disparity in knowledge and resources between traders and consumers. See Ross Cranston, *Consumers and Law* 3 (1978). Factors responsible for emergence of consumerism include, *inter alia*, information gap, performance gap, role of impersonal and unresponsive institutions, budget squeeze, ghetto consumers, fundamental innovations, problems of development, altered patterns of communication, need for informed participation, increasing complexity of goods and legal controls. S.K. Verma *et al.* (eds.), *A Treatise on Consumer Protection Law* 13 (2004).

and all ages, the modern version of the concept of consumer protection is the result of consumer movements which first started in the United States and involves the idea of protection of the rights of consumers through legislation without belittling the role of operation of market forces and business self regulation in the protection of the interests of consumers. In the beginning consumer organizations spearheaded the movement for protection of consumer interests through municipal law and legal institutions. But with the development in international trade and commerce and a substantial increase of business and trade which resulted in a variety of consumer goods appearing in the market to cater to the needs of the consumers, the need for enhanced international co-operation in the field of consumer protection became apparent. The UN General Assembly responded to the need of increased international co-operation among nation states for the purposes of consumer protection by adopting a set of guidelines⁴ which constitute a comprehensive policy framework in this regard. These guidelines focus on following seven areas: (i) physical safety; (ii) protection and promotion of the consumer economic interest; (iii) standards for the safety and quality of consumer goods and services; (iv) distribution of quality consumer goods and services; (v) measures enabling consumers to obtain redress; (vi) measures relating to specific area (food, water and pharmaceuticals); and (vii) consumer education and information programme. Though not legally binding the UN Guidelines provided the necessary impetus for structuring and strengthening of consumer policies and legislation by national governments across the globe.

Like consumer protection legislation of many foreign jurisdictions, the Indian Consumer Protection Act, 1986 is also said to be inspired by the UN Guidelines⁵ and provides for protection of the interests of consumers through national, state and district consumer protection councils⁶ and a three tier system of quasi-judicial bodies.⁷ But the task of consumer protection is an

4 U.N. Guidelines for Consumer Protection, U.N. Gen Assembly Res. 39/348 of April 9, 1985.

5 See, *Spring Meadows Hospital v. Harijol Ahluwalia*, AIR 1998 SC 1810; *India Photographic Co. Ltd. v. H.D. Shourie*, AIR 1999 SC 2453. Arijit Pasayat J attributes the enactment of the Consumer Protection Act, 1986 to globalization and observes thus: "With the industrial revolution and development in the international trade and commerce, there has been a substantial increase of business and trade, which resulted in a variety of consumer goods appearing in the market to cater to the needs of the consumers. With globalization and with free market economy the possibility of deficiency in the services rendered warranted enactment of the Consumer Protection Act, 1986 as amended from time to time". *Haryana State Electricity Board v. MamChand*, 2006 (4) SCC 649.

6 Ss. 4-8B, C.P. Act, 1986.

7 The Act provides for the establishment of the district forum, the state commission and the national commission. It has been held in *Skypak Couriers Ltd. v. Tata Chemicals Ltd.*, AIR 2000 SC 2008 that the commissions under the Act, are quasi-judicial bodies to provide speedy and simple redressal to consumer disputes and for the purpose they have been empowered to give relief of a specified nature and in appropriate way, toward compensation. Quoted with approval in *Haryana Electricity Board*, *supra* note 5.

arduous one and both law and institutions need to continuously adapt themselves according to the needs of and challenges faced by consumers. This is more necessary in view of the ongoing process of globalization and advances in the field of information and communication technologies. Against this background, it is heartening to note that as in past the apex court, high courts and the national commission have risen to the occasion during the period under survey too and dispensed consumer justice to consumers in a number of cases by adopting a consumer friendly approach. As national commission is the highest appellate body next to the Supreme Court under the Consumer Protection Act some of the judicial pronouncements of this quasi-judicial tribunal have also been included in this study in order to make the survey authentic, complete and comprehensive.⁸

II IMPORTANT DEFINITIONS

The Consumer Protection Act is a beneficial legislation, the avowed purpose of which is to promote the welfare of the people inasmuch as it attempts to remove the helplessness a consumer faces against powerful trade and business and the might of public bodies which are degenerating into storehouses of inaction.⁹ It is applicable to all goods and services. A scrutiny of the various definitions such as 'consumer', 'service', 'trader', 'unfair trade practice', indicate that each of these expressions are of wide amplitude and the legislature intends that they be given widest possible interpretation keeping in view the object and scheme of the Act. Being a beneficent legislation, the Act should receive a liberal construction¹⁰. A rational rather than a technical approach is the mandate of the law.¹¹ It is, therefore, the primary duty of the court to construe the provisions of the Act by adopting a constructive approach but without doing violence to the language of the provisions of the Act.¹² Simple meanings are to be attributed to the words used in the Act to understand their meaning and where two interpretations are possible the interpretations favouring the consumer is to be adopted.¹³ Viewed from this perspective the apex court, the high courts and the National Commission have generally adopted a rational, constructive, liberal and progressive approach in construing the key definitions and thereby exhibited a remarkable degree of judicial sensitivity in handling consumer cases.

Consumer

The term 'consumer' is defined in section 2(1)(d) of the Act in two parts, one in reference to a consumer who purchases goods and the second in

8 During the period under survey, the National Commission has delivered judgments and orders in 87 cases.

9 *Lucknow Development Authority v. M.K.Gupta*, AIR 1994 SC 787.

10 *Spring Meadows Hospital, supra* note 5.

11 *India Photographic Co. Ltd. v. H.D. Shourie*, (1999) 6 SCC 428.

12 *Supra* note 9.

13 *Oriental Insurance Co. Ltd. v. J.P. Vohra Industries*, (1998) CPJ 409.

reference to a person who hires a service. But a person who buys any goods or service for commercial purpose is generally regarded as not a consumer within the meaning of section 2(1)(d). One exception to this general rule is the purchase of machine/equipment for commercial or industrial purposes and occurrence of manufacturing defects therein during the warranty period. It has been held in *M/s East India Construction Co. v. M/s Modern Consultancy Services and Ors.*¹⁴ that even though the machine/equipment is used for commercial/industrial purposes if any manufacturing defect occurs during the warranty period then the issue is covered under the Act and for that purpose purchaser of the equipment is entitled to file a complaint under the Act. In the instant case manufacturing defects were noticed during the warranty period and there was continuous breakdown of machinery despite repairs from time to time by service engineers. Manufacturing defects could not be rectified. It resulted in deficiency in service. In view of the facts of the case the National Commission upheld the order of the state commission relating to the refund of the entire cost of the machine Rs. 15,37,000/- along with compensation and cost of litigation to the tune of Rs. 50,000 but modified the state commission's order by directing the complainant-consumer to return the equipment to the dealer.

Where a non-loanee farmer voluntarily gets his sown crop insured under Rashtriya Krishi Bima Yojana, 2002 and pays the requisite premium to the nodal agency for which it is entitled to entertain commission charges and the nodal agency thereafter remits it to the implementing agency, he is a consumer and non-payment of compensation to him under the said scheme constitutes a 'consumer dispute'.¹⁵ Again, purchaser of a truck under the hire purchase agreement is a consumer.¹⁶ If he defaults several times in repayment of loan instalments, the financier can take possession of the financed vehicle. Again, a pensioner and beneficiary of the Central Government Health Scheme would be a consumer under the provisions of the Act for the alleged deficiency in service by CGHS medical officer. In this context it is worth noting that service rendered by government employees before retirement would be 'consideration' for providing health services to him or his family members.¹⁷

Service

The term 'service' as defined in section 2(i)(o) of the Act is of wide amplitude and includes not only those services which are explicitly mentioned therein but even those which are not mentioned in this provision. Mobile service is a case in point, where due to defect in a mobile handset connection stopped giving service for outgoing as well as incoming calls. Service provider submitted that there was no talk time left at the credit of the appellant

14 2006 (4) ALJ 416. See also *Meera & Co. Ltd. v. Chinar Syntex Ltd.*, (2004) CPJ 1086; *Amtrex Amence Ltd. v. M/s Alpha Radios*, 1 (1996) CPJ 324 (NC).

15 *Smt. Hero Bai. v. Adm. Jati Seva Vurhatkar Ahkari Sanstha Samiti & Anr.*, AIR 2007 (Doc) 34 (Chh.)

16 *Surendra Kumar Agrawal v. Telco Finance Ltd. & Anr.*, AIR 2007 (Doc) 35 (HP).

17 *Jagdish Kumar Bajpai v. Union of India*, AIR 2006 NOC 261 (All).

complainant. It was held that service provider was liable to pay compensation because it could not produce the amount of the talk time consumed and balance at the credit of the complainant and to the contrary the complainant had filed copies of the recharge vouchers purchased by him from time to time and also submitted that he had sufficient talk time at his credit at the relevant time.¹⁸

Cable service is also covered under the Act. In *Tejender Singh v. Commandant, the Sikh Regimental Centre, Ramgarh Cantt & Anrs.*¹⁹ the petitioner had agreed to provide cable T.V. network facilities in the Sikh Regimental Centre for its officers and JCOs and other civilians. As per the terms and conditions of contract the service provider collected Rs. 250/- by way of security deposit from each connection holder. The petitioner was also authorized to charge Rs. 100/- per month as monthly subscription from the connection holder. When the cable connection was discontinued by the petitioner, respondent 1, filed a complaint before the district forum, claiming refund of security deposit. By its order it directed the petitioner (OP) to refund within one month to the complainant jointly or severally the security amount of Rs. 50,000/- only along with Rs. 5,000/- as compensation and litigation cost. The order was confirmed by the state commission. In appeal the high court did not find any reason to interfere with the order directing refund but extended time for refund.

In *Indochem Electronic v. Collector of Customs, A.P.*²⁰ the question for consideration before the Supreme Court was whether the extent of damages can be equivalent to the price of goods (in the instant case EPABX system) in view of the fact that in terms of section 12(3) of the Sale of Goods Act, a purchaser cannot reject the goods on breach of stipulation of warranty. The apex court answered this question in the affirmative and upheld the order of the state commission and the National Commission saying that no case had been made out for interference with the impugned judgment. In the instant case the appellants supplied EPABX telephone system to the respondent and installed the system in the office of the latter. A warranty for a period of one year was issued for the said equipment. The system had not been functioning for the past six months and the respondent requested the appellants to extend the warranty period for another three to six months. The appellants were insisting on 'annual maintenance service' for attending to the said complaints of the respondent to which the latter did not agree. In the proceedings before the state commission the appellants made two main submissions: (i) they could not maintain separate service centre at Vizag as the proposal became highly uneconomical and disproportionate to the installations in the region; (ii) as during the period of warranty, the respondent got the system attended to by the local mechanic, the same constituted breach of contract of warranty. The

18 *Arun Saxena v. Manager, Reliance Web World, Raipur & Anrs.*, AIR 2007 (DOC) 40 (MP).

19 AIR 2006 Jhar 28.

20 2006 (O) 6 GLHEL – SC 36974.

state commission rejected both these contentions and directed the appellants to refund a sum of Rs. 1,87,559/- with interest @12% from the date of the filing of the complainant till the date of payment after taking back the system supplementing them. Their appeal before the National Commission was also dismissed. In appeal the apex court said that telephone is a means of communication. The communication system was required to be run effectively and efficiently by the appellants having regard to the statutory duties they were required to perform. If appellants had not been able to attend to faults in the EPABX system, there would be a 'deficiency of services', on their part as immediate attention to such complaints was a part of the contract.

In *Laxman Thamappa Kotgiri v. G.M. Central Railway*,²¹ it has been held that services rendered by a railway hospital to railway employees and their dependants being part of conditions of service of railway employees would not amount to free service.

Unfair trade practice

The consumer fora have power to entertain and decide complaints regarding unfair trade practices. When satisfied with the allegation of unfair trade practice the forum can issue an order directing the opposite party to discontinue unfair trade practice and to issue corrective advertisement. Unfair trade practice means a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice. In *M/s Cox and Kings (I) Pvt. Ltd. v. Joseph A. Fernandes & Another*²² the revision-petitioner advertised details about 'Star Cruise' as the 'Two nights/three days Cruise' but according to complainant the cruise trip was only for two nights and one and half days. There was thus a shortage of one and half days. Both the district forum and the state commission agreed with the complainant and issued directions accordingly. The only issue involved in the revision petition was whether the revision petitioner resorted to an unfair trade practice. The National Commission found on facts that the petitioner deliberately timed the departure of the cruise at 11:59 i.e. one minute short of midnight and counted that one minute as one full day. It amounted to equating one minute of service with service of 23.59 hours. This led the commission to conclude that it was nothing short of outright cheating by the cruise company and by the revision-petitioner. The commission held that it was not only a case of misrepresentation through misleading advertisement but also an unfair trade practice. For this reason the commission directed the revision petitioner to withdraw the misleading advertisement under section 14(1) and to give correct advertisement under section 14(1)(h) of the Act. It also confirmed the order of the state commission with cost of Rs. 5,000/- to be paid to the respondent by the petitioner.²³

21 (2005) SCALE (1) 600.

22 2006 (2) ALJ 346. Also see *N. Ravindranath Kamath v. Spice Communications Ltd.*, 2006 (4) CPJ 67 NC.

23 *Ibid.*

III RELATIONSHIP OF THE C P ACT WITH OTHER LEGISLATIONS

The CP Act intends to secure inexpensive and expeditious consumer remedy. Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law for the time being in force. The intention of the legislature is to relieve consumers of cumbersome proceedings under other legislations or civil action. The Act is designed to enable majority of consumers to get redress through the machinery created under the Act. Consequently, the complainant has an option to seek redress either under the Consumer Protection Act or under any other law. Since the consumer agencies established under the Act are in addition to and not in derogation of any other law,²⁴ they are to supplement the legal system and not to supplant it. Keeping this in view the judiciary has developed over the years a rich *corpus* of jurisprudence on the relationship of the C.P. Act with other legislations and ousted the jurisdiction of consumer forums for a wide range of matters such as matters of civil nature or which are purely within the realm of breach of contract,²⁵ claims arising out of accidents caused by motor vehicles,²⁶ matters coming under the Railway Claims Tribunal,²⁷ cases involving complex questions of law and facts,²⁸ matters *sub judice* before civil courts,²⁹ claims under the Construction Workers Welfare Fund Act, 1988,³⁰ claims of economic loss³¹ (as opposed to consumer loss), complaints falling under section 7-B of

- 24 *Patel Laljibhai v. Adarsh Welding Works*, (1991) 1 CPR 641 (NC).
- 25 *Suraj Steel, Hazaribagh v. R.P. Sharma*, (1989) (NC); *M.L. Joseph v. State Bank of India*, (1989) (NC); *Shankar Birmiwal v. Jaipur Development Authority*, (1991) 2 CPR 86 Raj.; *Sales Tax Officer v. Ramnivas Agarwal*, (1993) 1 CPR 84 Ori.; *Mahabank Karamchari v. Irribuild*, (1993) 2 CPR 569 Mah.; *Union of India v. N. Basudevan*, (1993) 1 CPR 104 NC.
- 26 *Thiruvalluvar Transport Corpn. v. Consumer Protection Council*, (1995) 1 CPJ 3 SC; *Union of India v. M. Adai*, (1993) 2 CPJ 145 NC.
- 27 *Seasrole Chemical Ltd. v. E.R.*, (1995) 3 CPJ 405 WB; *Bhima Rao v. S.E.*, (1995) 2 CPJ 440 Kant.; *Union of India v. Derby Texttile*, 1993 CCJ 120 (Raj.)
- 28 *Panna Lal v. Bank of India*, (1992) 1 CPR 34 (NC); *Industrial Products, Karnal v. Punjab National Bank*, (1992) 1 CPR 70 (NC); *Special Machine Karnal v. Punjab National Bank*, (1991) 1 CPR 52 (NC).
- 29 *Special Machine Karnal v. Punjab National Bank*, (1991) 1 CPR 52 (NC); *Oswal Fine Arts. v. H.M.T., Madras O.P. No. 1 of 1988 dt. 27.4.1989*; *K.M. High School v. Som Dutt Sharma*, (1995) III CPJ 446 Haryana; *Laxmi Engineering Works v. P.S.G. Industrial Investment Corpn.*, (1995) II CPJ 209 TN; *Amita Corporation v. Manohar Lal Narang*, (1995) 1 CPJ 221 NC; *Goverdhan Das v. S.B.I.*, (1995) 1 CPJ 470 (Punj); *Proprietor, Jabalpur Tractors v. Sedmal Jainarain*, (1996) 1 CPJ 8 SC; *G.L. Goswamy v. Mandovi Motors*, (1995) 3 CPJ 553 Kant.; *Jitendra Nath v. Manju Geeta Mishra (Dr.)*, (1995) 1 CPJ 96 (Bihar); *Hotel Gandharva v. Bharat Bijlee Ltd.*, (1991) 1 CPR 138 NC; *U.P. Somshekar v. Secy., APMC Yard*, (1999) 3 CPJ 134 (Karn).
- 30 *District Executive Officer, Kerala Construction Workers' Welfare Board v. K.A. Baby*, (1999) 3 CPJ 308 (Ker).
- 31 Avtar Singh, *Law of Consumer Protection* 67 (2000).

the Telegraph Act.³² On the other hand, there are a large number of cases in which the jurisdiction of the consumer forums has been upheld despite the availability of remedies under other legislations. Further, criminal proceedings launched by the complainant on same cause of action is no bar to the maintainability of complaint under the Consumer Protection Act.³³ On the other hand, the doctrine of *res judicata* is also applicable to proceedings under the Act.³⁴

The aforesaid mixed trends also continued during the period under survey. In *Patric Gonsalves & Ors. v. M/s Haven Developers Pvt. Ltd. & Ors.*,³⁵ a case of alleged deficiency in service, the National Commission held that a permanent injunction suit filed before civil court would not bar complaint before the state commission as cause of action and reliefs claimed in suit and complaint is quite different. The decision is in accord with the line of reasoning adopted in earlier cases.

The peculiar facts and circumstances of the case of *Smt. Geetu Sapra and Ors. v. Dr. B.L. Kapoor Memorial Hospital, New Delhi and Anr.*³⁶ raised complex issues of jurisdiction. In the instant case one Rajiv Sapra, sustained injuries as a result of a motor accident. He was first taken to Safdarjung Hospital and given emergency treatment. Thereafter he was shifted to Dr. B.L. Kapoor Memorial Hospital (respondent) under the care of Dr. K.P. Mishra. When due to alleged negligence of the hospital in performance of the operation and in administering anesthesia, the condition of the patient became critical, he was shifted to Ashok Hospital, New Delhi where he died after 19 days of treatment. For the accidental death the complainant filed a claim petition before the motor accident claims tribunal. A complaint was filed before the National Commission claiming compensation to the tune of Rs. 54,04,000/- with costs for alleged deficiency in service in not giving proper treatment at proper time. The respondents contended that due to pendency of a claim petition before the motor accident claims tribunal the present complaint before the consumer forum for the same cause was not maintainable. This contention was accepted by the commission and the complainant was required to file civil appeal before the apex court. The apex court observed that in the present case the claim was

32 Where billing disputes require adequate investigation the matter may be referred to arbitration under section 7-B of the Telegraph Act: *Chief General Manager v. M.K. Gupta*, (1991) 2 CPJ 116 (WB). But matters relating to telephone are within the jurisdiction of the consumer forums: *Commercial Officer, Office of the Telecom, Distt. Manager, Patna v. Bihar State Warehousing Corporation*, (1991) 1 CPR 42.

33 *M.K.S. Balasubramanian v. Jayalakshmi Planners*, (1992) 1 CPR 133 (Mad).

34 See *Rakesh Mangal v. Pioma Industries*, 1993 CCJ 487 Raj., *Mam Raj v. M.D., Eicher Tractors Ltd.*, 1993 CCJ 548 Har; *U. Rajendran v. T.N. Mercantile Bank*, (1992) 1 CPR 504 NC; *Bishambar Lal Narang v. Bank of India*, (1995) II CPJ 587 Del; *Sree Kanya Plastics v. Aremppee Industries*, (1995) II CPJ 184 TN; *LIC v. Zareena Sulaiman*, (1995) 1 CPJ 4 NC; *Amar Singh v. Gurgaon Improvement Trnst.*, (1995) 3 CPJ 178 Har.

35 2006(2) ALJ 523.

36 2006(4) ALJ (DB).

not based on the accident but was based on the alleged negligence on the part of the hospital and doctors. It was entirely a different cause of action. The court, thereafter, dealt with the second submission of the respondent, namely, if the death had taken place due to accident, there was no question of maintaining a claim based on the negligence of the hospital and the doctors and observed that it was required to be decided by the National Commission. It is against this background that the National Commission considered the question of maintainability of the complaint and held the same to be maintainable because the causes were different and were required to be decided by separate tribunals/forums having limited jurisdictions. The decision is welcome from the perspective of consumer justice.

As a general rule the existence of a remedy under a legislation does not preclude an aggrieved person from seeking redressal before the forums constituted under the C.P. Act which is a special statute enacted by Parliament for the specific purpose of providing a speedy, cheap and efficacious remedy to consumers. The Orissa High Court adopted the correct approach when it held that the complaint claiming compensation for deficiency in banking service was maintainable because banking service is a service defined under the C.P. Act and the complainant having hired the said banking service for a consideration, squarely came under the definition of 'consumer'.³⁷

In *Union of India v. Ashok Shankar Sarkale*,³⁸ the question for consideration before the Bombay High Court was whether the district court was justified in entertaining a complaint claiming compensation from the railways for the death of two young and healthy persons caused by other passengers in quarrels. The railway department raised the issue of jurisdiction before the district forum but without any success. The high court, however, agreed with the petitioner that in view of the definition of 'untoward incident' provided under section 123(c) of the Railways Act, 1989 and sections 13 and 15 of the Railway Claims Tribunal Act, the district forum could not decide the disputes raised by the respondents.³⁹

As noted in the judgment, the railways department never disputed its liability to the extent of Rs. 4 lakhs as per the Railway Accident and Untoward Incidents Compensation Amendment Rules, 1987 before both the district forum and the high court. One wonders why then did the railways raise the issue of jurisdiction and not settle the claim of compensation at the instance of the district forum? Was raising of the issue of jurisdiction not actuated by the desire to cause avoidable hardships to the complainants-respondents? Fortunately, the court did not order the complainants to file a fresh claim before a railway claims tribunal but held that they were entitled claim Rs. 4

37 *Biratunga S.C.S. Ltd. (Mini Bank) v. Sangram Keshari Pati & Ors.*, AIR 2006 Ori 97.

38 AIR 2006 Bom 198.

39 Reliance was placed on *Thiruvalluar Transport Corpn. v. Consumer Protection Council*, AIR 1995 SC 1354; *Union of India v. V.M. Adair Kalam H.*, I (1993) CPJ 145 (NC).

lakhs towards the compensation over and above the interest accrued on the amount of Rs. 1,75,000/- already deposited in pursuance of the order of this court. While the decision is technically correct and is fortified by earlier decisions, it is felt that legalistic approach adopted by the courts in this and other cases perhaps overlook the spirit and object of the Act and the intention of the legislature that its provisions should be construed in a liberal, purposeful and meaningful manner so that a large number of consumers may get consumer justice without any hassle. It must be recognized that the object of the Act can be achieved only when the expression 'in addition to' in section 3 is given full effect by the courts and consumer fora. To the contrary, rigid adherence to technicalities in consumer cases would defeat the very purpose and object for which the Act has been enacted. It is submitted that the only issue raised in this case was whether railways were liable to pay compensation for the alleged deficiency in service and both the district forum and the state commission had jurisdiction to decide it. But the high court treated this as a case of 'untoward incident' and dealt with it under the Railway Claims Tribunal Act, 1987 which was hardly justified in the circumstances of the case.

As already noted, it has been held that where the complainant's case involves a determination of complex question of law and fact, a competent civil court and not a consumer forum is the appropriate forum to decide it. The reason is the essentially summary nature of proceedings before the forum/commission. The apex court underlined this fact in *Oriental Insurance Company Ltd. v. Munimahesh Patel*.⁴⁰

IV REMOVAL OF A MEMBER OF DISTRICT FORUM

President and two other members of the district forum are appointed by the state government on the recommendations of a selection committee with the president of the state commission as its chairman. While making recommendations the selection committee is required to be guided by the qualifications and disqualifications set forth in section 10. As the Act is silent on removal of a member or president of the district forum, it is supposed to be governed by the Consumer Protection Rules of each state. In *Arti Das v. State and Others*⁴¹ the state government in the exercise of its power removed the petitioner from the post of member, District Consumer Disputes Redressal Forum, Balsore, after being satisfied that the petitioner had acquired financial interests likely to affect her functions prejudicially and hence had ceased to be a member of forum. Before removing her from the said post she was given an opportunity to submit her explanation and on inquiry the government came to know that the petitioner continued to be an agent of LIC getting remuneration and commission even after she was appointed as member of the district forum.

40 Civil Appeal 4091 of 2006. Judgment dated 12.9.2006.

41 AIR 2006 Ori 13.

The court speaking through I.M. Quddusi J, held that the order of the government was not improper. The judge reasoned as follows: (i) recommendation of the selection committee is not part of appointment order inasmuch as the power of appointment is exclusively within the domain of the state government; (ii) according to section 17 of the Orissa General Clauses Act the authority having power to make any appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power; (iii) the appointment of the petitioner ceased in accordance with rule 3 of the Orissa Consumer Protection Rules after it was found that she had gained disqualification for being a member; (iv) there is nothing in section 24(b)(1) of the Act to suggest that the commission has also administrative control in the matter of removal of president or member of the district forum; and (v) it cannot be said that rule 3(b) of the Consumer Protection Rules is *ultra vires* the Act as the Act is silent on this provision, and the rule can supplement the Act.

While this decision is technically correct and reflects a legalistic approach to the issues raised in the case, it overlooks the vital issue of independence of the consumer forum created under the Act. It is submitted that in order to ensure judicial independence of members and president of the district forums/ state commission, the present system of executive inquiry should be replaced by a judicial inquiry and consumer protection rules should be amended accordingly and if possible a specific provision on removal of president or members from office in certain circumstances should be incorporated into the Act itself. In this context it is heartening to note that rule 13(2) of the Central Consumer Protection Rules, 1987 provides that the president or any member of the National Commission shall not be removed from his office except by an order made by the central government on grounds specified in clauses (d), (e) and (f) of rule 13(1) and after an inquiry held by a sitting judge of the Supreme Court to be nominated by the Chief Justice of India in which the president or member of the National Commission, as the case may be, has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and found guilty. Clause (d) of sub-rule 1 deals with acquisition of financial or other interest as is likely to affect prejudicially his functions as the president or a member while clause (e) deals with abuse of position by the president or member. Provisions on these lines should also be made for removal of the president or any member of the district forum/state commission.

V APPEAL TO STATE COMMISSION

According to proviso to section 15 of the Act no appeal by a person, who is required to pay any amount in terms of an order of the district forum, shall be entertained by the state commission unless the appellant has deposited in the prescribed manner 50% of that amount or Rs. 25,000/-, whichever is less. In *Messrs Wislon Sandhu Logistic India Private Limited and Anr. v. M/s*

Newtech Solar Systems Private Limited,⁴² the state commission for granting stay of the execution of the impugned order imposed a condition that the petitioner shall deposit 50% of the amount awarded by the district forum. In revision petition the National Commission clarified that the requirement of depositing amount is a precondition for entertaining appeal by the state commission. The question of granting stay/interim relief of the execution of the order passed by the district forum would arise only thereafter.

VI MAINTAINABILITY OF WRIT PETITION AGAINST ORDER OF STATE COMMISSION

The district forum, the state commission and the National Commission created under the Act are quasi-judicial tribunals. Like other courts and tribunals they are subject to power of superintendence conferred on the high court under article 227 of the Constitution. But this power is supervisory and not appellate jurisdiction. It has been held in a catena of cases that the power under article 227 is to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors.⁴³ The power of superintendence is in addition to the power conferred on the high courts under article 226. The powers of the high courts under articles 226 and 227 are separate and distinct and operate in different fields. Under article 226 the high court can issue a writ against the impugned order of the district forum or the state commission. But the high courts have devised self-imposed rules of discipline on their power and generally refuse to entertain a writ petition when 'an alternative efficacious remedy' by way of appeal or revision is available to the person aggrieved. The principle has been stated by the apex court as follows: 'It is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of another remedy does not affect the jurisdiction of the Court to issue a writ; but the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs'.⁴⁴ Article 226 is not meant to short-circuit or circumvent statutory procedures. The Supreme Court has laid down the rule of 'exhaustion of the statutory remedy'.⁴⁵ But this rule is 'a rule of policy, convenience and

42 2006(4) CPJ 25 NC.

43 See, *Waryam Singh v. Amarnath*, AIR 1954 SC 215; *Jijabai v. Pathan Khan*, AIR 1971 SC 315; *Ahmedabad Mfg. & Calico Pkg. Co. Ltd. v. Ramtahal Ramnand*, AIR 1972 SC 1598.

44 *Union of India v. T.R. Varma*, AIR 1957 SC 882.

45 *Than Singh v. Supdt. of Taxes*, AIR 1964 SC 1419; *All India Lawyers for Civil Liberties v. Union of India*, AIR 2001 Del. 380; *State of Uttar Pradesh v. Labh Chand*, AIR 1994 SC 754; *Secretary, Minor Irrigation and Rural Engineering Services v. Sahngoo Ram Arya*, (2002) 5 SCC 521; *A.P. Venkateswaran, Collector of Customs, Bombay v. Ram Chand Sobhraj Wadhvani*, AIR 1961 SC 1506.

discretion rather than the rule of law'.⁴⁶ It has been held that as the jurisdiction of the high court is discretionary, it will take into consideration the alternate remedy available and then decide whether in the circumstances of the case, it should grant or refuse to grant a remedy under article 226.⁴⁷

In this background it is not surprising that the high courts have taken conflicting positions on the maintainability of a writ petition against the order of the state commission. In *Surya Prasad Shukla v. M.P. State Consumer Dispute Redressal Commission and Ors.*⁴⁸ the Madhya Pradesh High Court did not find it proper to entertain the writ petition challenging the order of the state commission in view of availability of an efficacious alternative remedy being available to the petitioner in the form of a revision petition before the National Commission under section 21 of the Consumer Protection Act. To the contrary in an earlier decision⁴⁹ of the Jharkhand High Court, P.K. Balasubramanyan J (as he then was), while dealing with a similar contention held that though a revision under the C.P. Act is provided against the order passed in an appeal by the state commission before the National Commission, the writ petition cannot be held to be not maintainable on account of availability of alternative remedy.⁵⁰ In *M/s J.J. Spinners Ltd. v. The Commission of Commercial Tax, Orissa*⁵¹ the Orissa High Court adhering to this principle opined that where the principle of natural justice is violated by not providing an opportunity of hearing even in the absence of any statutory provision to that effect the jurisdiction of the high court under articles 226 and 227 can be invoked. On the other hand, in *R.V. Jaivel v. State of Tamil Nadu*,⁵² the Madras High Court has held that when the National Consumer Forum can have the jurisdiction to call for the records from the state commission and to set aside the order containing any perverse finding, without exhausting that remedy of approaching the high court under article 227 could not be considered as maintainable. The court's observation is significant as it clarifies the position of law even in the context of section 27 of the C.P. Act (which provides for imposition of penalties). It is in consonance with and in continuation of the line of reasoning adopted in *M/s Maxworth Homes Ltd. v. Raman*.⁵³

While this approach is sound and legally and logically convincing the same cannot be said about the approach adopted by the court in *Executive Officer, Sri Baldeo Jew Bije Keonjhar v. Annapurna Jena and Anr.*⁵⁴ In this case the complainants-respondents purchased certain land from the present

46 *State of Uttar Pradesh v. Md. Nooh*, AIR 1958 SC 86.

47 *Gopal Sen v. State of West Bengal*, AIR 1981 Cal. 437. For further details on 'alternative remedy', see M.P. Jain, *Indian Constitutional Law* 402 (2004).

48 AIR 2006 MP 81.

49 *Managing Director, District Co-operative Milk Union Ltd.*, AIR 2004 Jhar. 101.

50 Reliance was placed on *L. Chandra Kumar v. Union of India*, AIR 1997 SC 1125.

51 1997 (2) OLR 179.

52 AIR 2006 Mad 215.

53 2005 (3) LW 455.

54 AIR 2006 Ori 72.

petitioner after due permission from the endowment commissioner as required under section 19 of the Orissa Hindu Religious Endowments Act, 1951. As noted by the district forum the complainants had paid part of the consideration money for no purchase. The district forum decided that it had jurisdiction and directed the present appellant to execute the sale deed. The present appellant challenged the decision of the district forum but failed to appear on the date of hearing and the state commission upheld the impugned orders. Counsel for the petitioner made three contentions before the high court: (i) Forums created under the C.P. Act have no jurisdiction to decide the disputes in question in view of sections 19 and 73 of the Orissa Religious Endowment Act; (ii) the claim for purchase of the deity's landed property has become non-maintainable in view of expiry of the period of operation of the order under section 19 of the Endowments Act by the date of alleged negotiations, between the complainant and the appellant, or (iii) the writ petitions under articles 226 and 227 are maintainable as contrary to the plea of the complainant-respondent no. 1 section 19 of the C.P. Act is inapplicable in the present case and section 21(b) provides for *suo motu* supervisory jurisdiction of the National Commission. Curiously, while the petitioner argued that the consumer forums had no jurisdiction to decide the case they also expressed their desire to participate in the hearing before the state commission and prayed that the appeals be remanded to the state commission.

The high court allowed the prayer holding that the case did not fall under the 'alternative and efficacious' exception to the writ jurisdiction under articles 226 and 227 of the Constitution due to non-compliance of the principles of natural justice occasioned by the failure of the state commission to appoint a guardian for the deity which happens to be a perpetual minor and decide the appeal on merits in his presence. The court also addressed the issue of bar of jurisdiction of the consumer forum in view of the special nature of the Religious Endowment Act. It noted that the state commission has discretion under sub-rule (6) of rule 8 of the Consumer Protection Rules to dismiss the appeal or decide it on merit on an adjourned date of hearing of the appeal even when the appellant or his authorized agent fails to appear. Still it held that the state commission committed a breach of law by not considering the grounds raised in the appeal, and remanded the case to the state commission.

In *Biratunga S.C.S. Ltd. (Mini Bank) v. Sangram Keshari Pati & Ors.*⁵⁵ the Orissa High Court opined that since allegations of lack of jurisdiction of state commission and violation of principles of natural justice have been made, writ petition cannot be thrown out on the ground of availability of alternative remedy by way of appeal. However, on examining the merits of the case the court concluded that the state commission had not committed any error in entertaining the complaint and deciding the same. With regard to the violation of principles of natural justice the court noted that the petitioner had admitted

55 *Biratunga S.C.S. Ltd. (Mini Bank) v. Sangram Keshari Pati & Ors.*, AIR 2006 Ori 97.

the service of notice on it by the state commission, directing it to appear and file counter show cause. Further, the petitioner admitted that it appeared in the said case by engaging an advocate.

While the overall approach of the high courts to petitions under articles 226 and 227 of the Constitution against orders of the district forum/state commission is commendable, following points deserve their attention. *First*, the Consumer Protection Act, is a self-contained Act and procedure set forth in it is simple and based on the principle of natural justice. Moreover, section 13(3) of the Act provides that no proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with. So stretching the requirements of natural justice beyond service of notice to the opposite party and opportunity of hearing will be in violation of the Act. *Secondly*, consumer forums are required by the Act to decide the cases according to provisions of the Act and technical rules of the Code of Civil Procedure and other legislations are as such not applicable to redressal agencies. Hence, non-compliance of such rules by them should not generally be seen as an error on their part. *Thirdly*, the Consumer Protection Act has created a hierarchy of bodies under the Act with power to hear appeals at every stage. The intention of the legislature appears to be that the district forum or the state commission or the National Commission should be allowed to perform their duties speedily without any interruption. Presidents of these forums have long judicial experience and are competent enough to decide the issues relating to the jurisdiction of the forum or to determine whether the complainant before them is a consumer and whether he has made out grounds for the grant of relief. It is submitted that the intention of Parliament would be defeated if at the initial stage objections as to jurisdiction are permitted to be raised before the high court because such proceedings are bound to cause delay and the very purpose of creating the new forums would be defeated. *Fourthly*, whenever questions of jurisdiction are raised, the high court has undoubtedly power to entertain a writ under article 226 of the Constitution, but it should generally decline to exercise it and allow the statutory remedy to be exhausted. And *finally*, whenever jurisdiction of the consumer fora is under challenge, the high court should, as far as practicable, decide the case and grant appropriate relief and refrain from remanding the matter to the state commission or relegating the complainant to raise a first claim before the appropriate authority because it is bound to cause avoidable delay and unnecessary hardship to the consumer.

VII POWER TO SET ASIDE *EX PARTE* ORDERS

Section 22A of the Consumer Protection Act stipulates that 'where an order is passed by the National Commission *ex parte* against the opposite party or a complainant, as the case may be, the aggrieved party may apply to the commission to set aside the said order in the interest of justice. But there is no corresponding provision in relation to the state commission and the

district forum. It has been held by the Orissa High Court that there is no provision under the Act to set aside an *ex parte* judgment or to recall/review the judgment passed by the district forum or the state commission.⁵⁶ The Supreme Court in *Jyotsana Arvind Kumar Shah*⁵⁷ has also held ‘... if the law does not permit the respondent to move the application for setting aside the *ex parte* order, which appears to be the position, the order of the State Commission, setting aside the *ex parte* order cannot be sustained’.

VIII FINALITY OF ORDERS

It has been provided under section 24 that every order of a district forum, the state or National Commission shall, if no appeal has been preferred against such order under the provisions of the Act, be final. In other words, in the absence of an appeal being preferred before the superior consumer forum the order of the forum below will become final. Another related question is whether preferring of an appeal would operate as stay of an order appealed against. According to the Allahabad High Court, section 24 does not imply that if an appeal has been preferred against the order passed by the district forum, its order cannot be executed or action cannot be taken for its violation or non-compliance.⁵⁸

IX ENFORCEMENT OF ORDERS AND PENALTIES

Constitutionality of section 27 of the Act

Although the questions raised in *State of Karnataka v. Paramjit Singh and Ors.*⁵⁹ have become academic after the deletion of proviso to section 27 by the Consumer (Amendment) Act, 2002 (which came into force in 2003), the instant case will be helpful in understanding the rationale of the said amendment and the scope of amended section 27. As is well known, section 27 clothes the district forum, state commission and National Commission with the power to pass an order of civil imprisonment for the breach that may be committed by the party against whom the order is passed under the Act. The person against whom an order is made under this section may be punished with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than Rs. 2,000/- but which may extend to Rs. 10,000/- or with both. Proviso to section 27 (now deleted),

56 *Biratunga S.C.S. Ltd. (Mini Bank) v. Sangram Keshari Pati & Ors.*, AIR 2006 Ori 97 at 100.

57 1999 (3) CPJ 1.

58 *Allahabad Development Authority and Anr. v. District Consumer Protection Forum & Anr.*, AIR 2006 All 71. Reliance for this view was placed on *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.*, (2005) 1 SCC 705. Reference may also be made to *Shri Chamundi Mopeds Ltd. v. Church of South India Trust Association*, (1992) 3 SCC 1.

59 AIR 2006 SC 1406.

however, permitted imposition of lesser fine or sentence of imprisonment. The Karnataka High Court held that the proviso to section 27 being violative of articles 20 and 21 of the Constitution was unconstitutional as it authorized the consumer forum to impose a punishment without providing procedure for the same. Interestingly, the court did not see any unconstitutionality in the main provision of section 27 and held that by filing a complaint before the criminal court in accordance with the procedure prescribed, the offence created and the penalty provided under section 27 can be tried and imposed. In appeal the State of Karnataka and the Union of India challenged the correctness of view expressed by the high court. It was contended on their behalf that after having been held that the main part of section 27 was not unconstitutional, the proviso which only permitted imposition of lesser fine or sentence of imprisonment, cannot by any stretch of imagination be held to be unconstitutional. The Supreme Court, however, agreed with the contention of respondent no. 1 that the questions had really become academic after the amendment to section 27. The apex court, speaking through Arjit Pasayat J observed that it is to be noted that by the Consumer Protection (Amendment) Act, 2002 the proviso which was struck down as unconstitutional by the high court has been omitted. By incorporating sub-section (2) it has now been provided that the consumer fora shall have the power of a judicial magistrate of first class for the trial of offences under the Act and on such use of powers, he shall be deemed to be a judicial magistrate of the first class.

Issue of non-bailable warrant against president of a co-operative society

In *R. Jaivel v. State of Tamil Nadu*⁶⁰ the contentious issue for consideration before the high court was whether issuance of non-bailable warrant by the district forum against a person who was president of the society at the time of breach of agreement in spite of the fact that no award or decree was passed against him in his individual capacity was proper. The high court answered that question in the affirmative. The view of the court is fortified by case law. Thus, in *Ravikant v. National Consumer Disputes Redressal Commission*,⁶¹ where the position of law regarding lifting of cooperative veil was considered, the Delhi High Court has observed that the penal provisions of section 27 of the Act can be applied to the directors of the companies, notwithstanding the absence of a specific provision for action against those in charge of or in control of the affairs of the company. Again, in *Byford Leasing Ltd. v. Union of India*,⁶² a division bench of the same high court has held that under section 27 of the Act the chairman and managing director of a company can be proceeded against, he being in charge of the management and control of the affairs of the company. In *R. Jaivel* the Madras High Court has only extended this doctrine of lifting of corporate veil to the cooperative society against which an award was passed by the district forum in assessing

60 AIR 2006 Mad 215.

61 AIR 1997 Del 182.

62 (1995) 57 DLT 623.

the liability of its president. The court has reasoned that cooperative society can also be considered as an association of persons and the persons associated themselves in the affairs of the society may after lifting the corporate veil be identified in assessing their liability based upon missions in their official capacity.

Compliance with requirements of natural justice before imposition of punishment under section 27

In an unreported decision, the Allahabad High Court has held that awarding punishment with imprisonment for any term and imposing fine is an exercise in the nature of quasi-criminal proceeding and, therefore, the authority is bound by the principles of equity, fair play and natural justice. So opportunity of hearing is to be given by the district forum before proceeding under section 27.⁶³ In the instant case the district forum had issued notice to petitioners Allahabad Development Authority to the objections. As per recital of the district forum petitioner no. 2 had sought ten day's time for filing the reply, but did not do so. Accordingly, the court concluded that if petitioner no. 2 had chosen not to file any reply or to contest the matter before the district forum, he alone has to be blamed.

Executing court has power to proceed under section 25

Section 25 of the Act provides for the enforcement of order by the district forum, the state commission or the National Commission, as the case may be. Section 25(1) stipulates: 'Where an interim order made under this Act is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached'. According to sub-section 2 of section 25 no attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any to the party entitled thereto. Sub-section 3 provides for issue of a certificate for the amount due from any person under an order made by the district forum/state commission/National Commission to the collector of the district and recovery of the amount by the latter in the same manner as arrears of land revenue. The question is whether the consumer forum becomes *functus officio* after passing an order and, therefore, has no power to proceed under section 27 of the Act. An equally, important issue is whether the district forum/state commission/National Commission can exercise its power under section 27 of the Act even when recourse to proceeding under section 25 has not been taken. These two issues came for consideration before the Allahabad High Court in *Allahabad Development Authority and Anr. v. District Consumer*

63 *Allahabad Development Authority & Anr. v. District Consumer Protection Forum and Anr.*, AIR 2006 All 71.

*Forum and Anr.*⁶⁴ The court held that the plea that the district forum had become *functus officio* after passing the impugned order was inconceivable and unacceptable and that power under section 27 could be exercised even before having recourse to proceeding under section 25. In brief, the court said that the power of an executing court does lie with the district forum, the state commission or the National Commission, as the case may be, under the Act.

X LIMITATION PERIOD

In *M/s Kashi Prasad Cotton Pvt. Ltd. and Anr. v. Smt. Kamladevi Kanhaiyalal Shrawagi*,⁶⁵ the commission has held that for purpose of filing complaint limitation would start running against the petitioner from the date of legal notice. As complaint was filed within three months from the date of notice, it was not barred by limitation. In *R. Jaivel v. State of Tamil Nadu*⁶⁶ acknowledgment of liability was made on 9.12.1996. If that is taken into account complaint could have been filed even later i.e. upto 9.12.1998. Since the complaint was filed on 30.11.1998, it was within two years limitation from the date of cause of action.

XI DEFICIENCY IN SERVICE

The term 'deficiency' is defined in section 2(1)(g) of the Act as follows: 'deficiency' means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. The apex court in *Ravneet Singh Bagga v. K.L.M. Dutch Airlines*⁶⁷ has observed that in view of the definition of "service" and "deficiency" in sections 2(1)(o) and 2(1)(g) of the Act, deficiency in service cannot be alleged without attributing fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be performed by a person in pursuance of a contract or otherwise in relation to any service. The burden of proving the deficiency in service is upon the person who alleges it⁶⁸. As regards the test of 'deficiency' it has been pointed out by the Supreme Court that 'the rendering of deficient service has to be considered and decided in each case according to the facts of that case for which no hard and fast rule can be laid down. Inefficiency, lack of due care, absence of *bona fides*, rashness, haste or omission and the like may be the factors to ascertain the deficiency in rendering the service.'⁶⁹

64 *Ibid.*

65 2006(5) ALJ 741.

66 *Supra* note 60.

67 (2000) 1 SCC 66.

68 *Id.* para 6.

69 *Ibid.*

Investment

In *Punjab University v. Unit Trust of India and Ors.*⁷⁰ the Punjab University out of the funds of the provident fund of its employees invested Rs. 9.6 crores in IISF US-93 because there was protection of original capital by guarantee and there was assured return of 16% p.a. payable half yearly. Five years later Rs. 19 crores which the university received on the maturity of the said scheme was invested by it in another scheme IISF US-98 with a specific understanding that the dividend which was receivable during the scheme period would be reinvested and it would be refunded with a minimum interest @ 13.5% per annum. The question for consideration before the National Commission was whether the complainant was entitled to interest @ 13.5% p.a. on the dividend which was reinvested with the UTI. The commission held that the UTI was liable to return the capital invested by the complainant, i.e. 19 crores and it was required to pay return on the said units at the rate of 13.5%. However, in case where the return is reinvested through the purchase of units on NAV basis, its repurchase price would be only on the basis of NAV price.

General insurance

In *Kundan Rice Mills Ltd. v. National Insurance Company Ltd.*⁷¹ the question before the National Commission was whether the complainant was entitled to recover interest at the rate of 10% p.a. on the sum awarded if the insurance company failed to pay the said amount within six weeks from the date of the order. The said order was passed on 25.2.2005 and the insurance company paid the amount only in June, 2006. In its order the commission had also directed that in the event of failure of the insurance company to pay the amount within six weeks from the date of the order it shall pay interest at the rate of 10% p.a. from the date of receipt of surveyor's report (16.7.1998). Against the order passed by the commission both parties filed civil appeals which were dismissed by the apex court. In the current proceeding (execution proceeding) the respondent made the following submissions: (i) the question of payment of interest did not arise as the company made payment within one month of the apex court's order; and (ii) part of the order asking for payment of interest from the date of receipt of the surveyor's report was penal in nature. The commission rejected these contentions and laid down the following propositions: (i) mere filing of appeal before the apex court would not amount to stay of the order of the commission; and (ii) the court or commission has no power to modify the order which has attained finality. In the end, the execution petition was allowed and the insurance company was directed to comply with the order of the commission passed on 25.2.2005 by paying interest @ 10% p.a. within a period of eight weeks from the date of this order.

70 MANU/CF/0323/2006.

71 MANU/CF/0321/2006.

72 MANU/CF/0317/2006.

In *Satish Prasad Sahu S/o Shri Devdin Sahu v. New India Assurance Co. Ltd. through Branch Manager*,⁷² the National Commission was faced with the question as to whether an insurance company could repudiate the insurance claim on the ground that the driver was not having valid driving licence. The commission answered this question in the negative relying on the apex court's ruling in *United India Insurance Company v. Lehu and Ors.*⁷³, wherein it has been held that owner hiring a driver is not required to verify whether the driving licence has been issued by a competent authority. In the instant case owner's truck was insured with the respondent, insurance company. The vehicle met with an accident. On the claim being lodged, the insurance company appointed a surveyor who assessed the loss at Rs. 78,500/-. When the insurance company repudiated the claim, the owner filed a complaint before the district forum which allowed the complaint and directed the insurance company to make payment of Rs. 78,500/- with interest at the rate of 10 per cent per annum from the date of the claim with costs quantified at Rs. 500/- only. That order was set aside by the state commission on the ground that the driving licence was not valid. In the revision petition by the original complainant the National Commission restored the order of the district forum.

In *National Insurance Company Ltd. APMC Yard Branch Mrutyunjaya Nagar, Dharwad v. Suresh Babu, Agriculturist and Ors.*,⁷⁴ a vehicle having permit for sitting capacity of 19 passengers was damaged due to an accident when it was carrying 35 to 36 passengers. Carrying passengers more than the permitted capacity is a gross violation of the terms of insurance policy, and the provisions of law as contained in the Motor Vehicles Act. The National Commission held that the decision of the insurance company declining to pay the compensation for damages was proper.

In *Messrs. Target Plywood Industries Ltd. v. Senior Divisional Manager, Oriental Insurance Company, Ansal Area, Delhi and Ors.*⁷⁵ the complainant, a small scale industry, engaged in the manufacturing and marketing of plywood and allied-products claimed a sum of Rs. 81.33 lakhs for loss caused by fire in the factory. Relying on the report of surveyor and not on that of the investigator the National Commission estimated the value of the stock destroyed by the fire to the tune of Rs. 57,29,120.76 and directed the insurance company to pay the deducted amount of Rs. 28,64560/- with interest @10% p.a. from 1st June, 1998 (i.e. after 7 months from the date of the incident and three months from the date of the report of the surveyor). The opposite party was also directed to pay costs assessed at Rs. 1,00,000/- to the registrar of the commission who will deposit the same in the consumer welfare fund.

Cases of suicide deaths of farmers due to indebtedness have been reported from different parts of the country. Concern over such deaths has also been expressed by the National Commission in *New India Assurance Co.*

73 MANU/CF/0219/2003.

74 MANU/CF/0320/2006.

75 III (2006) CPJ 332 (NC).

*Ltd. v. Uppalapati Veera Swamy and Ors.*⁷⁶ In this case more than 1000 were affected by a devastating fire that took place in a cold storage because they had deposited chillies therein. The district forum directed the insurance company to reimburse the claimants by taking into consideration the model price based on the report of the Agricultural Market Committee, Guntur at the rate of Rs. 22/- per kg for red chillies and Rs. 6/- for white chillies. The state commission confirmed the finding of the district forum with a single modification with regard to the rate of interest. These orders were considered proper by the National Commission. The commission reminded the insurance company of its duty under regulation 9 of the Insurance Regulatory and Development Authority (Protection of Policy Holders Interest) Regulations, 2002 to offer the settlement of the claim to the insured within a period of 30 days and to pay interest in case of delay of seven days from the date of acceptance of offer by the insured at the rate above the bank interest prevailing at the beginning of the financial year in which the claim is reviewed by it. The commission thought that payment on the basis of the loss assessed by the surveyor with interest at the rate of 7.5% p.a. was just and proper. In what appears to be a significant observation from the point of view of farmers the commission said that 'it is the duty of the insurance company to pay the amount to the poor farmers who have lost their products in such a fire and who cannot approach the consumer forum due to their ignorance or want of money.

In *National Insurance Co. Ltd. v. Nipha Exports Pvt. Ltd.*,⁷⁷ the sole question to be determined was whether there was any delay in payment of Rs. 70,38,038 and if so whether the insurance company was liable to pay interest at the rate of 6 per cent as awarded by the commission. The apex court relying upon *Polymat India Pvt. Ltd. v. National Insurance Co. Ltd.*⁷⁸ held that there was no delay in making the payment which would warrant the award of interest on delayed payment. The court reasoned that the important dates to be decided in such circumstances was the date on which the quantum of compensation and to whom it should be paid was finally decided and not from the dates on which the correspondence started between the parties.

When a firm discharges the initial burden regarding destruction, damage of the showroom and the stocks therein by fire and riot in support of the claim under insurance policy, the onus lies on the insurance company to disprove such claim with evidence, if any. The apex court has given this ruling in *M/s Shobha Ka Attire v. New India Assurance Co. Ltd. & Anr.*⁷⁹ In the instant case in the wake of a series of bomb blasts in the city of Coimbatore on 14.2.1998 coupled with mob frenzy, arson and looting the entire stock of goods in the appellant's showroom was either looted or reduced to ashes. On the basis of report of surveyors which did not take into account the stock in the basement of the appellant's showroom, the insurance company worked out the

76 III (2006) CPJ 366 (NC).

77 2006 (2) SCALE 678.

78 2004 (10) SCALE 99.

79 Appeal (Civil) 2066 of 2006, Judgment dated 15.09.2006.

claim of Rs. 1,02,38,738/-. The bank from which the appellant's firm enjoyed the benefit of loans supported the case of the appellants by informing the insurance company that the stock insured was for Rs. 2 crores and the average stock at any time in the insured premises was more than 2 crores and the bank requested the insurance company to re-consider the claim of the appellant. Yet the insurance company refused to pay the balance amount of Rs. 97,83,827/- on the suspicion that the appellants had themselves transported part of the goods from the showroom and for that purpose relied on the report of investigators, although on the facts of the case the apex court concluded that the insurance company, despite the report of the investigator, failed to establish that the claim of the appellant firm was not justified and was not covered by the policy of insurance.

Crops insurance

Agricultural Insurance Company of India v. Kemle Gowda,⁸⁰ a case related to crop insurance throws light on the way in which insurance schemes meant for farmers are being implemented at the grass root level. Particularly disturbing is the fact that in the event of failure of crop due to faulty implementation of the said schemes farmers are required to spend the amount in litigation and in approaching the officers. This not only increases corruption, but also causes financial hardships to the farmers. In the instant case the respondent refused to settle the crop claim compensation of the complainants on the ground that they had not at all grown any potato crop in the land. Relying on the revenue record produced by the complainants the district forum held respondent no. 1 liable to pay the claim. It also held that since till date they had not been paid, it amounted to deficiency in service and respondent no. 1 was liable to pay Rs. 5,000/- also. The state commission upheld that order. One of the contentions of the insurance company before the National Commission was that the investigation report of the Agricultural Finance Corporation which caused the investigation at the instance of the General Insurance Corporation was not considered by the state commission. The National Commission while rejecting this contention stated that investigation report was an afterthought and it would not nullify what is recorded on the spot by the village accountants with regard to cultivation of the crop. The judgment gives an account of the suggestions and recommendations of the investigation report with regard to implementation of the insurance scheme with approval. Consumer forums created under that Act are protectors of consumer's rights and watch-dog of consumer's interests and the National Commission has demonstrated that it is aware of this responsibility by stressing the need of implementation of the recommendations and by directing registry to communicate a copy of the order to the Secretary, Government of India, and Ministry of Agriculture for taking appropriate action so that farmers may not suffer and such schemes are implemented properly.

80 IV (2006) CPJ 313 (NC).

Harassment of senior citizens

The government has launched a number of popular schemes for the benefit of senior citizens including the scheme for concessional fare to travel by rail and buses. But due to the callous attitude of the concerned employees they at times not only face hardship but insult, ridicule or physical injury at the hands of extra-enthusiastic and extra-vigilant employees and officers and prefer to suffer in silence because of a feeling of utter helplessness which very often overtake them after such unfortunate events. The facts of *Delhi Transport Corporation v. Mukhtyar Singh*⁸¹ reveal the helplessness of a senior citizen of more than 70 years of age who could not get any relief from various authorities including the district forum which he approached in his quest for justice. He could get justice only at the hands of the state commission. This case also shows that consumers have a most potent and effective legal tool in the form of Consumer Protection Act, to ventilate their grievances and get justice provided they do not succumb to pressure and pursue the matter with patience and determination despite their mental agony. In the instant case a very old and sick person was manhandled by the staff of the DTC on the ground that he had failed to produce the age certificate. Even a person having weak eye sight could have said that he was a senior citizen and his age would be 70 years. Despite this, he was asked to purchase a ticket for a sum of Rs. 10/-. His pass was snatched away from him and he was manhandled. In the facts and circumstances of the case, the National Commission appreciated the state commission for passing the impugned order on the basis of the ratio laid down by the apex court in *Lucknow Development Authority v. M.K. Gupta*,⁸² and quoted some observations of the court in the said case with great appreciation.

In *Mrs. Shipra Sengupta v. G.M.T. Commercial Southern Railway & Anrs.*⁸³ the National Commission held that the detention of a senior citizen who was availing of railway concessions by railway staff member and handing her over to police despite the fact that her ticket was checked at Kolkata and during course of her journey, showed high handedness of railways and directed the railways to refund amount of Rs. 3,806 charged as penalty and to pay compensation of Rs. 25,000/- for irreparable physical and mental agony caused to the complainant. As per rules senior citizens availing railway concession on demand produce some proof of age during journey. The commission said that words 'some proof of age' cannot be equated with documentary proof issued by government institutions or authorities. It further said the prescription of doctor cannot be construed as not authentic. In the instant case the complainant senior citizen had given proof of age issued by Sankara Netralaya and voter identity card showing her date of birth in addition to prescription of doctor showing her age.

81 IV (2006) CPJ 180 (NC).

82 MANU/SC/0178/94.

83 AIR 2006 (NOC) 795.

In *J.L. Sethi and Ors. v. Senior Citizen Home Complex Welfare Society (Regd.) through its Secretary, New Delhi*⁸⁴ the complainants had applied for a two bed room flat and paid to the society the total sum of Rs. 6.30 lakhs. They were not allotted any flat even after six years of registration. Thereafter, they sought refund of the amount with interest and in the alternative immediate allotment and possession of the flat. The district forum directed the opposite party to refund the amount deposited by the complainant with interest at the rate of 18% p.a. from the respective dates of deposit till payment and pay Rs. 25,000/- as compensation and Rs. 5,000/- as cost of litigation. In appeal the state commission observed that once compensation is awarded, the district forum is not empowered to grant any interest. The National Commission held that the finding recorded by the state commission was erroneous and held that interest may be awarded by the district forum under section 14 of the Act. For this view it relied on *Sovintorg India Ltd. v. State Bank of India*⁸⁵ and *Ghaziabad Development Authority v. Balbir Singh*⁸⁶ wherein interest was awarded by the consumer forum by way of compensation and damages. Considering the facts of the present case, particularly the fact that the senior citizens had lost the opportunity to have a flat in the area of their choice and the fact that the rate of premises had increased over the years, the National Commission directed the respondent society to refund the amount deposited by the complainants along with interest @12% per annum (instead of 18% p.a. as directed by the district forum) and also pay Rs. 25,000/- as litigation cost.

Group insurance

In *Central Coalfield Ltd. through its Chairman-Cum-Managing Director v. Bandana Mishra W/o Late Shri Dinesh Chandra Mishra and Oriental Insurance Company Ltd. through the Sr. Branch Manager*,⁸⁷ the question that arose for consideration related to the liability of the insurance company to pay the assured sum under the group insurance scheme to the complainant after the death of her husband despite the delay in remitting the premium amount from the salary of the latter by the employers to the insurance company. The National Commission held that the employer and not the insurance company was liable to pay the assured sum with interest to the complainant-respondent no. 1. The commission while pointing out the distinction between the salary saving schemes and the group insurance scheme observed that under the salary saving scheme each employee owns the policy individually, whereas in a group insurance the employer is the insured.⁸⁸

In *Punjab Urban Planning and Development Authority through the Chief Administrator and Estate Office v. Davinder Singh Viridi and Ors.*⁸⁹ there was

84 III (2006) CPJ 356 (NC).

85 MANU/SC/0464/1999.

86 MANU/SC/10282/2004.

87 MANU/F/0167/2006.

88 The Commission distinguished the present case from *DESU v. Basanti Devi*, MANU/SC/0621/1999 and *Chairman, LIC and Ors. v. Rajiv Kumar Bhaskar*, 2005.

89 MANU/CF/0171/2006.

controversy around the legality of charging the price of land allotted to respondent at the rate of Rs. 3,600/- per square yard taking the date of 22.04.1997 on which respondents allegedly completed the formalities for transferring the land. The National Commission upheld the order of the state commission by which the Development Authority was directed to charge the price of the plot at the rate of Rs. 1,400/- per sq. yard and interest @ 10 p.a. instead of charging at enhanced rate of Rs. 3,600/per sq. yard and interest @ 15% p.a. But it set aside the order insofar as it related to awarding of Rs. 1 lakh towards difference in cost and compensation.

Municipal services

In *Smt. Usha Rani Agrawal and Ors. v. Nagar Palika Parishad, Nainital through Executive*,⁹⁰ the complainants filed an application for obtaining the copy of the house tax assessment order in respect of the newly constructed portion. To obtain true copy of the order they deposited a stamp paper worth Rs. 10/- and approached various authorities as the district forum and had to spend a large amount. The commission held that the complainants were consumers and denial of the assessment order was a case of deficiency in service. It observed that communication of the assessment order was a statutory duty under the existing law and that is part of the service which is required to be rendered by the *Nagar Palika*. That duty, if not performed, would be deficiency in service. Relying on *Lucknow Development Authority*⁹¹ it was also held that it amounted to *mala fide* exercise of power and abuse of power by the officers of *Nagar Palika* which required to be dealt with sternly lest crime and corruption would thrive and prosper in society due to lack of public resistance. The National Commission while setting aside the order of the state commission directed the *Nagar Palika* to pay a compensation of Rs. 10,000/- to the complainants (which included cost of litigation in the case). *The Nagar Palika* could, if it so wishes, recover the said amount from the concerned defaulting employees.

Marine insurance

In *Unichem Laboratories Ltd. v. New India Assurance Co. Ltd. and Patel Roadways Ltd.*,⁹² the main question for consideration before the National Commission was whether in case of loss of insured goods or merchandise, the insurance company was bound to reimburse on the basis of the cost of production or on the basis of sale price or by taking into account cost of production plus profit. It was held that the insurance company was only required to reimburse on the basis of cost of production of the goods or merchandise and not on the basis of the sale price of goods or cost of production plus loss of profit.

90 IV (2006) CPJ 20 (NC).

91 AIR 1994 SC 787.

92 III (2006) CPJ 359 (NC).

In *National Insurance Company Ltd. v. M/s Mangalgouri Cashew Industries*⁹³ etc. the five complainants had obtained marine policies from M/s National Insurance Company on different dates for different sums assured under each policy for dried cashewnuts with shells from a party in the United Kingdom, which was to be transported by sea from Apapa, Nigeria via Colombo to be off-loaded at Tuticorin from where it was to be carried by road to the business premises of the complainants around Mangalore. It appears that there was some delay in trans-shipment of cargo from Colombo to Tuticorin and when the goods reached the destination they were found to be soaked in rain water which made the cashewnuts virtually useless. When the insurance company declined to settle the insurance claims, five complaints were filed before the state commission which in turn allowed those complaints. In appeals before the National Commission the insurance company made the following submissions: *First*, the policy covered only sea-peril and not germination of the cashewnuts and germination of cashew nuts is not a sea peril. *Second*, there was delay in arrival of the goods at Tuticorin and because of the delay, the insurance company was not liable to reimburse the complainant. *Third*, there was suppression of material facts by the complainants i.e. suppression of the quality of goods. *Fourth*, damage or decay to goods was due to inherent vice of goods. The commission rejected all these contentions and directed the insurance company to pay Rs. 25,000/- in each of the appeals to the complainant in addition to insurance claims with interest @12% p.a. as ordered by the state commission.

Medical service

Medical negligence is a deficiency in service for which the doctors/clinics/hospitals/nursing homes may be held liable under the Consumer Protection Act. But when 1 ml of E-mal was administered to a child aged 4 and ½ years old and roughly weighing 16 kg for the treatment of malaria from which he was suffering for sometime and according to medical opinion this is very much in the prescribed dosage and there was no medical or clinical report to show that administering the said injection could cause death, it was held in *Dr. Ganesh Prasad and Anrs. v. Lal Janmajay*,⁹⁴ that there was no medical negligence on the part of doctors.

Where death of a patient takes place because of denial of treatment due to delay in arranging more money demanded by the nursing home, doctors will be held liable for medical negligence. The National Commission has ruled thus in *Dr. S.S. Prasad v. Sumitra Devi*.⁹⁵ The decision is based on the

93 2006 (4) ALJ 430.

94 2006 (2) ALJ 333 (NC).

95 2006 (1) ALJ 895. Reliance was placed on its own judgment in *Pravat Kumar Mukherjee v. Ruby General Hospital*, (2005) 2 CPN 35 (NC), wherein it was held that doctors cannot insist and wait for money when death is knocking at the door of the patient and that withdrawal of treatment cannot be justified on any ground.

commission's own judgment in *Pravat Kumar Mukherjee v. Ruby General Hospital & Ors.*^{95a}

While denial of treatment due to delay in payment of money demanded by a nursing home amounts to medical negligence or deficiency in service, mere non-admission of patient on account of non-availability of a vacant bed neither tantamounts to medical negligence nor deficiency in service. The National Commission has taken this stand in *Sukumari Sahu & Anrs. v. Tata Memorial Hospital, Mumbai & Ors.*⁹⁶ This case relates to alleged medical negligence against Tata Memorial Hospital, Mumbai and its doctors in treating a terminally ill 15 years young boy suffering from blood cancer who died within a few days after his admission in the hospital. Complainants alleged medical negligence on three counts: (i) non-admission of the patient on the pretext of no vacancy; (ii) denial of permission to the patient's father to donate blood because he was suffering from hypertension; and (iii) carelessness and sheer negligence in the treatment of the patient and administration of various medicines and injections by the doctors. Complainants, however, failed to prove their case. In particular, they could not produce extracts from any standard medical text to prove the contention that the patient was given wrong treatment which was not authorized by the medical science. They also failed to produce any evidence from any expert in Oncology to support their contention that their son died on account of sheer negligence, careless and casual treatment etc. as alleged by them.

In *Krishna Murari Sinha v. Dr. Md. Basheer Alam*,⁹⁷ it was held that no medical negligence could be attributed to the respondent because treatment provided to the complainant was the standard treatment done for the type of fractures that he had sustained in his knee and complication of post-operative stiffness was not because of any deficiency on the part of the respondent. Range of motion ultimately achieved, to a large extent depends on the efforts put in by the patient during post operative rehabilitation which is usually guided by physiotherapist. In this case, patella was removed and the respondent had plastered the entire leg of the patient upto the thigh and had also advised physiotherapy.

In *Baburao Satappa Irrannavar v. K.L.E Society's Hospital & Research Centre & Anr.*⁹⁸ a patient aged 64 years was diagnosed for gastric outlet obstruction and electrolyte imbalance and surgery was the only remedy advised to her. Surgery was performed but patient died due to respiratory failure. Clinical notes of the hospital indicated that sincere efforts were made by hospital authorities and doctors concerned. Experts also opined that surgery was the only remedy available to a patient suffering from gastric outlet obstruction. Further, no evidence with supportive medical test was produced

95a (2005) 2 CPJ 352.

96 2006 (2) ALJ 39.

97 2006 (5) ALJ 742.

98 2006 (5) ALJ 767.

to prove medical negligence of doctors. It was held that there was no medical negligence.

Life insurance

In *Krishna Wati v. L.I.C. of India*⁹⁹ the insured was attacked by a cow while he was on his way to his office. As a result he fell down, suffered chest pain and died within three days. The insurance company released only the single benefit, treating it as a case of natural death and double accident benefit was refused on the ground that death was caused not by accident but due to heart attack. The National Commission refused to accept this contention and directed the insurance company to pay the balance amount of Rs. 55,000/- with 9% interest from the date of complaint. It also ordered that Rs. 5,000/- be paid as cost by the respondent to the complainant-petitioner.

In *Oriental Bank of Commerce v. Motilal Sharma & Anrs.*¹⁰⁰ the insurance company was found definitely deficient in rendering service to the complainant by not ensuring that cheques of surrendered value of Jeevan Dhara Policy of LIC was delivered to him. The National Commission held that non-delivery of cheques to the complainant is a clear case of deficiency and directed the insurance company to pay the complainant the whole amount as directed by the state commission along with interest of 12% p.a. instead of 18% p.a. as directed by the state commission with effect from 1.10.1992 till the date of payment alongwith compensation of Rs. 5,000/- awarded by the state commission. It also allowed the appeal filed by the Oriental Bank of Commerce holding that the state commission erred in fastening the liability on the bank. The National Commission also held that the insurance company shall be free to proceed against the postal authority or any one else who withdrew the money as per law and that it shall be entitled to the benefit of time spent before the consumer forum under section 24A of the Limitation Act. The commission based its decision on the fact that in the absence of any arrangement between the complainant and LIC to send cheque of surrender value of policy by post office, sending of cheque through a registered post will not absolve the LIC from their liability if the cheque is not proved to be received by the complainant because in the facts and circumstances of the case the post office could only be deemed to be agent of the insurance company and not of the beneficiary/complainant.

Air service

In *K. Nagrath & Ors. v. Indian Airlines & Anr.*¹⁰¹ the petitioner and his family members had confirmed tickets from Agartala to Kolkata by Indian Airlines flights in economy class. On last page of jacket of ticket clear instructions were printed that passengers were required to report at airlines counter 30 minutes before the scheduled time of departure. The petitioner

99 2006 (2) ALJ 201.

100 2006 (2) ALJ 291.

101 AIR 2006 (NOC) 642 (NC); 2006 (2) ALJ 498.

failed to report at check in counter 30 minutes before. It was held that airline authorities were not at fault in denying the economy class boarding passes to petitioners.

Flats

In *Patrick Gonsalves & Ors. v. M/s Haven Developers Pvt. Ltd. and Ors.*¹⁰² the issue for determination by the commission related to deficiency in service on the part of respondent-builders. The complainants purchased flats from the respondent builder. Before giving possession the builder assigned its rights in favour of a third party by a deed of assignment. It was evident from the said deed and the title of indemnity that the third party had undertaken all rights and liabilities of respondents and they had stepped into the shoes of builders without reservation. They had agreed to indemnify the respondent against any liability that might arise due to any litigation either from flat purchasers or judicial orders. The third party converted the flat premises into an international hotel. The commission held the third party along with respondents jointly liable to reimburse the loss caused to the complainants. They were directed to refund purchase amount of flats with 12% interest and compensation of Rs. 5,00,000/- to each for deficiency in service.

In *Chief Administrator, PUDA & Anr. v. Mrs. Shabnam Virk*,¹⁰³ facts in nutshell were as follows: The appellants floated a scheme for allotment of 784 four storey M16 (super) flats on hire purchase basis at SAS Nagar (Mohali) as per the advertisement inviting applications for allotment under the said scheme. The tentative cost of the flat was fixed at Rs. 6.3 lakhs. However, condition (2) therein clearly stated that the price quoted was purely tentative and that it was likely to be revised on the higher side by the time houses are completed. Letters of allotment issued on completion of the houses indicated revised prices. The complainant-respondent accepted the allotment of the house and undertook to abide by all the terms and conditions of the allotment letter. Upon depositing 25% of the price of the flat as stipulated in the allotment letter, the respondent took possession of the flat. By its order the National Commission held that as delay in handing over the possession was clearly established and the reasons for price escalation of the house were not proved or established the respondent was entitled to get the house at the advertised price. The Supreme Court reversed the said order, saying that the commission erred in granting relief to the respondent.

*Delhi Development Authority v. R.K. Saxena and Ors.*¹⁰⁴ is another case relating to delay in delivery of flat to the complainant respondent. In the allotment letter it was stated that for delay beyond 30th month upto 36th month till the issue of demand letter for fifth and final instalments, allottee shall be paid interest at the rate of 7% p.a. and beyond 36th month at 10% on his/her deposit. The National Commission considered the aforesaid conditions of

102 2006(2) ALJ 523.

103 AIR 2006 SC 1758.

104 2006 (2) ALJ 796.

allotment letter and marginal delay in the instant case and awarded interest at the rate of 10% p.a. to the complainant for the alleged delay.

It now seems to be a well established principle of law that the grant of interest at a flat rate of 18% in cases of delay in the delivery of possession of plots is not proper.¹⁰⁵

Non-delivery of car

In *M/s Navbharat Motor Agency, Solapur v. Kaushikabhai Ishwarbhai Patel & Ors.*¹⁰⁶ the only issue for determination related to liability of dealer for non-delivery of car to purchaser despite payment of money. Draft was prepared by the purchaser in the name of the manufacturer and there was no delay in forwarding that draft to manufacturer by the dealer. But perhaps on account of manufacturing problems the car could not be delivered. It was held that the dealer could not be held responsible for this deficiency in service.

Electricity

Whether assessment of the duty for the unauthorized use of electricity, tampering of meters, distribution of meters and calibration of electric current being matters of technical nature, could be decided by the consumer forum was the question for consideration before the apex court in *Haryana State Electricity Board v. Mam Chand.*¹⁰⁷ The court did not express its own view on this point and thought it fit to remit the matter to the state commission for fresh disposal. In the instant case, the complainant-respondent, was having small power electric connection. That connection was checked by the junior engineer. On checking he found the seals of the meter were broken. The electricity board therefore issued notice to the complainant calling upon him to deposit Rs. 10,150.00 as per the rules of the *Nigam*. The complainant did not raise any dispute whatsoever and instead requested to be allowed to deposit the said amount in installments and his request was acceded to. The complainant, however, filed a complaint before the district forum alleging loss of Rs. 50,000 on account of the *Nigam* making a false allegation of theft against him. He denied tampering of the meter as alleged. His main contention was that the concerned meter was not checked by the *Nigam*, and therefore, he was not liable to pay the demanded penalty as claimed by the *Nigam*. The district forum allowed the complaint and directed the *Nigam* to refund the amount of Rs. 10,500.00 with interest of 18% per annum from the date of deposit till payment. The *Nigam* was also ordered to pay Rs. 5,00,00 by way of costs. The judgment and order of the district forum were affirmed by the state commission and the National Commission. The apex court while acknowledging that the supply of electric energy by the *Nigam* falls under section 2(1)(o) of the C.P. Act turned its attention to the question which was not decided by the consumer forum namely: Whether the beneficial consumer

105 See, *Haryana Urban Development Authority v. Nath Ram*, (2005) 1 SCC 57.

106 2006 (1) ALJ 164.

107 2006 (O) 6 GLHEL SC 37178.

jurisdiction of the consumer forum extended to determination of tortious acts and liability arising therefrom. It was urged on behalf of the petitioner that under the Electricity Act, 2003 the jurisdiction of the civil court is barred in respect of matters falling under section 145 of the Act such as unauthorized use of electricity, tampering of meters. These are matters of assessment and the contention of the *Nigam* was that in matters of assessment of electricity bills the consumer forum should have directed the respondent to move before the competent authority under the Electricity Act, 2003.

Electricity Board, a statutory authority and a state within the meaning of article 12 of the Constitution is expected to discharge its statutory functions within reasonable time. To the contrary in *Punjab State Electricity Board Ltd. v. Zora Singh*¹⁰⁸ the apex court found that the board failed or neglected to supply electricity within reasonable time and according to requirements as specified in circulars/regulation. The court noted that no reason had been assigned by the board regarding such non-compliance. It held that the board unjustly enriched itself with the amount of security deposits made by complainants without rendering any service in return and that the prospective consumers could not be made to suffer for internal matters of the board becoming cash-starved owing to faulty decisions of the state government. For these reasons the court affirmed the order of the National Commission. By its judgment and order the commission had directed the board to release the connections to all applicants by 31.03.2004. It also had directed payment of interest @12% p.a. on amounts deposited and compensation of Rs. 10000 to each of them as electric connections had already been given to the complainants. The court modified the interest rate awarded by the commission to 9% p.a. and reduced compensation to Rs. 5000 each.

Supply of electricity is regulated not only by the Consumer Protection Act, but also by a host of specific legislations like Indian Electricity Act, 1910, Indian Electricity Rules, 1956 and the Electricity Act, 2003. The pertinent question is whether it is proper for a consumer forum to hold that raising of demand for alleged tampering with the meter is illegal and that reference ought to have been made in terms of section 26(2) of the Indian Electricity Act, 1910. The apex court answered this question in the negative in *Sub-Divisional Officer (P.) UHBVNL v. Dharam Pal*.¹⁰⁹ After an analysis of section 26(6) of the Electricity Act and case law on the subject the court concluded thus: 'What is contemplated by Section 26(6) is a running meter, but which on account of some technical defect registers the amount of energy supplied or the electrical quantity contained in the supply beyond the prescribed limits of error. It contemplates a meter which is either running slow or fast with the result that it does not register the correct amount of energy supplied ... Therefore, Section 26(6) can have no application in a case where, a meter has become completely non functional on account of any reason whatsoever'.¹¹⁰

108 2005 (O) 6 GLHEL-SC 35328.

109 2006 (12) SCALE 465.

110 *Ibid.*

In other words, section 26(6) has no application in cases of tampering or theft or pilferage of electricity. In the instant case the board had installed a meter at the factory premises of the consumer-complainant. The inspecting staff found that there was tampering with the meter and thereafter a demand of Rs. 107,326/- was made purporting to be charges payable for actual consumption of energy. Questioning the demand, a complaint was filed before the district forum. The complainant denied any tampering with the meter and prayed that reference should be made to the electricity inspector in terms of section 26(6) of the Act. The district forum agreed with the complainant. The appeal against the order was rejected by the state commission. The National Commission dismissed a revision petition holding that the direction given by the district forum was proper. But the orders passed by these authorities were questioned by the apex court in view of non-applicability of section 26(6) of the Electricity Act to the facts and circumstances of this case.

Banking service

The Consumer Protection Act provides relief against deficiency in banking service. In *Vimal Chandra Grover v. Bank of India*,¹¹¹ the Supreme Court has held that banking is business transaction between bank and customers. Such customers are consumers within the meaning of section 2(i)(d)(ii) of the Act. As noted by the apex court 'banking' means acceptance for the purpose of lending or investment of deposit of money from the public, repayable on demand otherwise. Banks provide or render service facility to its customers. Facilities/services rendered by banks include, *inter alia*, remittances, accepting deposits, providing for lockers, facility for discounting of cheques, collection of cheques, issue of bank drafts. Banking is thus a commercial function covered under the term 'service' under section 2(i)(o) of the C.P. Act.

In *Standard Chartered Bank Ltd. v. B.N. Raman*,¹¹² the Supreme Court upheld the findings of the state commission and the National Commission but remitted the case to the state commission to pass the decree in favour of the respondent in accordance with the law indicated by it in the judgment. It noted that neither the state commission nor the National Commission had examined the question regarding selection of the appropriate date at which the foreign currency amount had to be converted into the Indian currency, the appropriate rate of exchange on that particular date as well as the rate of interest which the appellant bank was required to pay. In the instant case the respondent, a NRI, had deposited US \$5,000 on 17.8.1979 carrying 9 per cent interest and maturity on 17.11.1984. According to the respondent in 1984 he had given instruction to reinvest the entire amount in FCNR account on maturity for a period of six years at 13% p.a. He alleged that in September 1990 he had requested the bank to reinvest the amount in his FCNR account for a further

111 AIR 2000 SC 218.

112 2006 6 GLHEL – SC 37526.

period of three years. But in 1992 the appellant bank informed him that there was no outstanding amount in his name in the FCNR account. By another letter, the appellant informed that the deposit in question was permanently withdrawn on 22.11.1979. The state commission rejected the plea of withdrawal of the deposit and passed an order in favour of the complainant-respondent. As far as the issue of limitation the commission concluded that as the deposit was reinvested from time to time the complaint was within limitation.¹¹³

In *Branch Manager, Indian Bank, Prathakola Branch v. K. Swamanna S/o K. Subba Rayudu*¹¹⁴ a cheque for an amount of Rs. 19,608/- of the Union Bank of Dharwad issued by M/s Sarpan Agri-Horticulture Research Centre was deposited by the complainant in his saving account in the petitioner bank. The said cheque after dishonour was sent through a courier by Dharwad branch to the petitioner bank but was not delivered to the petitioner. Factum of loss of cheque in question during transit was brought to the notice of the respondent-complainant well before the expiry of three years period from the date of issue of the said cheque. It was held that the respondent cannot seek payment of the entire amount of subject matter cheque and can claim only compensation for deficiency in service on part of the petitioner bank in not returning the cheque to him.¹¹⁵

In *Allahabad Bank, Bhopal v. Ranbir Singh Bhadoria*,¹¹⁶ theft of jewellery from bank locker took place. The hirer of locker filed a complaint. The bank took the plea that when the hirer last time operated locker he had mischievously removed four bolts of locker from inside, removed contents thereof and went away closing locker without key. It was held that if locker was closed without key, the bank should have detected that fact on inspection of locker immediately after it was used as also on physical verification of locker at the end of the day. The hirer of locker had filed complaint after lapse of 19 months when he operated locker and detected theft. There was thus deficiency in service on the part of the bank. It was held that the order of the forum directing bank to pay Rs. 2 lakh with interest to hirer was not improper.

XII CONCLUSION

The aforesaid survey of case law reveals that the Consumer Protection Act is a jewel in the crown of consumer law and that the tribunals created under the Act and the courts have made best possible efforts to provide redress to the victims of unfair trade practices and exploitative deeds of market operators in the era of globalization, liberalization and privatization by interpreting the provisions of the Act liberally in the lights of its object and

113 *Ibid.*

114 MANU/CF/0169/2006.

115 On the point see also, *Corporation Bank v. N.C.S. Films rep. by its Managing Partner Sri Narayan Narasimha Murthy*. MANU/CF/0170/2006. *State Bank of Patiala v. Rajendra Lal and Anr.*, IV (2003) CPJ 53 (NC) was relied on.

116 2006 (2) ALJ 326.

underlying philosophy. Their decisions not only show a bias in favour of consumers but also a remarkable degree of judicial sensitivity towards the plight of ordinary consumers, especially farmers and senior citizens which deserve all kudos and applause from the right thinking citizens of society. But since consumer protection is inextricably linked to good governance, human rights, development, democracy, administrative efficiency and work culture in government departments, adequate supply of essential goods and services and pro-consumer economic policies, law and legal institutions should not be seen as a panacea to solve all the problems of consumers and legal measures should be complemented by appropriate administrative and economic measures. All these measures would bear fruits and will be effective in ameliorating the condition of helpless and exploited consumers only when they know about their rights and a broad based dynamic and vibrant consumer protection movement emerges in this country. To this end consumer education programmes should be launched vigorously, particularly at the grassroot level.